MEMORANDUM DECISION

IN THE

Court of Appeals of Indiana

Kevin Faughnder,
Appellant-Petitioner

v.

Amy Nondorf f/k/a Amy Faughnder,
Appellee-Respondent

March 18, 2024

Court of Appeals Case No.
23A-DR-1000

Appeal from the Porter Superior Court

The Honorable Mark A. Hardwick, Magistrate

Trial Court Cause No.
64D02-1512-DR-11174

Memorandum Decision by Judge Mathias
Judges Tavitas and Weissmann concur.

Mathias, Judge.

[1] Kevin Faughnder ("Husband") appeals the Porter Superior Court's denial of his motion to amend or replace a military pension division order ("MPDO") in this dissolution proceeding. Husband presents three issues for our review, which we consolidate and restate as one issue, namely, whether the trial court erred when it denied his motion.

[2] We affirm.

Facts and Procedural History

[3] On April 24, 2018, the trial court entered a final decree dissolving Husband's marriage to Amy Nondorf ("Wife"). The decree incorporated the parties' settlement agreement, which provided in relevant part that Wife would receive fifty percent of Husband's gross military pension when he retired. On April 29, the trial court approved an MPDO prepared by Wife's counsel, signed by the parties, and notarized.

[4] In September, Wife's counsel sent a letter to Husband's counsel stating:

> [Wife] received notice from the Defense Finance and Accounting Service ("DFAS") that the Military Pension Division Order, file-stamped April 29, 2018, cannot be approved because the Order requires the following information:
>
> 1. A fixed amount, a percentage, a formula or a hypothetical that the former spouse is awarded;

> 2. The member's high-3 amount at the time of divorce (the actual dollar figure); and
>
> 3. The member's years of creditable service at the time of divorce.
>
> I believe the existing Order satisfies the first requirement. However, we need Mr. Faughnder to provide us with the answers to the second and third requests. For the second request, please have Mr. Faughnder provide us with his end-of-year LES statements for 2015, 2016, and 2017 as well as his year-to-date LES for 2018. If Mr. Faughnder believes additional or alternative documentation will satisfy this request, please provide the same.
>
> For the third request, please have Mr. Faughnder provide us with his LES statement from May 1, 2018[,] which should be the LES closest to the date of dissolution of April 24, 2018.
>
> According to DFAS, we must submit a response on or before November 20, 2018. Thus, your prompt response to these requests is much appreciated. If you have questions or concerns, please contact me.

Appellant's App. Vol. 2, p. 55. After additional attempts to obtain this information, Husband's counsel finally submitted it to Wife's counsel in February 2019.

[5] In an email to Husband's counsel dated March 5, Wife's counsel stated:

> After reviewing the documents Mr. Faughnder provided concerning the calculation of his "high 3" pay for the Military Pension Division Order, I do not feel confident calculating this pay amount. It is my understanding that Mr. Faughnder can request documentation from his employer confirming his "high-3" amount as of the date of the divorce. Please ask Mr. Faughnder to request confirmation of his "high-3" pay as of the

> date of the divorce, April 24, 2018, and provide said documentation to my office.
>
> If Mr. Faughnder is unwilling or unable to promptly request such documentation, please let me know.

Id. at 63. With no response from Husband or his counsel, Wife's counsel sent Husband's counsel a letter by email on May 2, stating:

> Enclosed please find a copy of the revised Military Pension Division Order wherein we incorporated the revisions required by DFAS. Please review the enclosed order and advise of any necessary changes. *If I do not hear from you by end of day on Wednesday, May 8, 2019, we will attach the previously executed signatures pages from the initial pension division order and file this revised order with those signature pages*. Generally, I do not like to set time deadlines on these types of matters. However, this order has been pending for way too long, in part, because of a lack of cooperation by Mr. Faughnder.

Id. at 64 (emphasis added). And on May 8, Wife's counsel sent Husband's counsel the following email:

> On May 2, 2019, I sent you a revised version of the Military Pension Division Order wherein we incorporated the revisions required by DFAS. We further stated that we would file the same with Mr. Faughner's previously executed signature page if we did not receive a response by end of day today. To date, we have not received a response from you. Please let me know the status of the revised Order. If it is not acceptable, please contact me immediately. If Mr. Faughnder signed the revised Order, please forward his executed signature page to my office. *If we do not hear from you by the end of the day today, we will assume that you authorize*

> *us attaching Mr. Faughnder's previously executed signature page and filing the revised Order*.

Id. at 65 (emphasis added).

[6] When Wife's counsel had heard nothing back from Husband's counsel in response to those emails, Wife's counsel filed the revised MPDO with the trial court on May 23. Neither party signed the revised MPDO for submittal to the trial court. Rather, Wife's counsel cut and pasted the parties' signatures that they had executed with respect to the original MPDO in 2017. Both the signatures and notary blocks showed the date as August 10, 2017. The trial court approved the revised MPDO on May 24, 2019.

[7] On July 11, Wife received a letter from the DFAS stating in relevant part that it had received the revised MPDO and that Husband would be notified of the application and that he would have thirty days "to provide information regarding the status of the court order." *Id.* at 67. The letter also stated that, if Husband did "not provide an order which supersedes the order you submitted payments should tentatively commence within 90 days after the member retires and begins to receive retired/retainer pay." *Id.* Husband did not respond to the DFAS notification or challenge the revised MPDO either with the DFAS or with the trial court.

[8] Husband retired, and, in March 2021, he began receiving his military retirement benefits. In June, Husband, by new counsel, filed his "Motion to Amend/Modify or Replace Military Pension Division Order." *Id.* at 29. In that

motion, Husband alleged that: he neither approved the revised MPDO nor had "notice of it prior to filing"; the signatures appear to have been cut and pasted from the original MPDO; the only substantive difference between the two MPDOs was that the revised MPDO included his creditable years of service and "high 3" figure at $129,314.40; and both the creditable years of service and the high 3 figure are incorrect. *Id.* at 30. Husband also alleged that the revised MPDO would result in an overpayment to Wife. Finally, Husband stated that the "Court and the parties simply cannot apply the incorrect formula and must correct the same to conform to the Federal Regulations, including correcting the high three calculation and the years of service." *Id.* at 33.

[9] On July 2, Wife filed a motion to dismiss Husband's motion. Wife pointed out that Husband had not cited any trial rule upon which his motion was based. Wife stated that it was presumably made under Trial Rule 60(B), but that any such motion was untimely. In his response, Husband alleged that Wife's motion to dismiss was untimely. Husband also argued that his motion was not brought under Trial Rule 60(B) but was a motion for declaratory judgment or clarification of the trial court's dissolution decree. In the alternative, Husband argued that his motion was properly brought under Trial Rule 60(B). And Husband argued that Wife forged his signature on the revised MPDO and committed fraud and/or a fraud on the court.

[10] Following a hearing, the trial court found that Wife had not committed fraud or a fraud on the court and denied Husband's motion to amend, modify, or replace the revised MPDO. The court found in relevant part:

> [3.] . . . [T]here was no fraud on the Court or on Father as Father was represented by counsel during the time before and after the second order was entered and counsel for Mother attempted multiple times to receive cooperation from counsel for Father prior to the second order being entered.
>
> 4. Further, the Court is not convinced the second order has any effect on Father's military pension payment or on Mother's portion of same.

Id. at 85-86. Husband filed a motion to correct error, which the court denied. This appeal ensued.

Discussion and Decision

[11] Initially, we note that the procedural posture of this appeal is difficult to discern. Husband's motion did not identify a trial rule upon which he relied in seeking to amend the MPDO. Wife argued that Husband's motion must have been a motion to set aside under Trial Rule 60(B). Husband disagreed and argued that he was merely seeking to clarify the trial court's dissolution decree. During the hearing, the trial court did not hear evidence, but only argument, and the parties submitted exhibits for the trial court's consideration.

[12] In any event, Husband cites our Supreme Court's opinion in *Stonger v. Sorrell*, 776 N.E.2d 353 (Ind. 2002), for the applicable standard of review. In *Stonger*, a father alleged that his ex-wife committed fraud on the court in the context of a child custody determination. Three years after the trial court issued the dissolution decree, the father filed a motion to set aside the decree. The Court explained that father had missed the one-year deadline to bring a motion under

Trial Rule 60(B)(3) and construed father's motion "either as an independent action or as a pleading to invoke the court's inherent power to grant relief for fraud on the court." *Id.* at 357. And the Court stated that,

> [r]egardless of which procedural avenue a party selects to assert a claim of fraud on the court, *the party must establish that an unconscionable plan or scheme was used to improperly influence the court's decision and that such acts prevented the losing party from fully and fairly presenting its case or defense*. Fraud on the court has been narrowly applied and is limited to the most egregious of circumstances involving the courts.

Id. (citations omitted, emphasis added).

[13] The Court in *Stonger* set out the standard of review as follows:

> The decision of whether to grant or deny a Trial Rule 60(B) motion for relief from judgment is within the sound, equitable discretion of the trial court. *Wolvos v. Meyer*, 668 N.E.2d 671, 678 (Ind. 1996). We will not reverse a denial of a motion for relief from judgment in the absence of an abuse of discretion. *Id.*; *Miller v. Moore*, 696 N.E.2d 888, 889 (Ind. Ct. App. 1998). Moreover, where as here, the trial court enters special findings and conclusions pursuant to Indiana Trial Rule 52(A), our standard of review is two-tiered. First, we determine whether the evidence supports the findings, and second whether the findings support the judgment. *Carnahan v. Moriah Prop. Owners Ass'n*, 716 N.E.2d 437, 443 (Ind. 1999). The trial court's findings and conclusions will be set aside only if they are clearly erroneous. *Id.* In reviewing the trial court's entry of special findings, we neither reweigh the evidence nor reassess the credibility of the witnesses. *Indianapolis Convention Ass'n v. Newspaper*, 577 N.E.2d 208, 211 (Ind. 1991). Rather we must accept the ultimate facts as stated by

> the trial court if there is evidence to sustain them. *Estate of Reasor v. Putnam County*, 635 N.E.2d 153, 158 (Ind. 1994).

Id. at 358. However, "when 'the trial court rules on a paper record without conducting an evidentiary hearing,' as happened here, we are 'in as good a position as the trial court . . . to determine the force and effect of the evidence.'" *In re Adoption of C.B.M.*, 992 N.E.2d 687, 691 (Ind. 2013) (quoting *GKN Co. v. Magness*, 744 N.E.2d 397, 401 (Ind. 2001). "Under those circumstances, our review is de novo." *Id.*

[14] Husband's contention that Wife committed fraud on the court is without merit. First, Husband did not submit any evidence to the trial court in support of that contention. Without evidence, Husband has not "establish[ed] that an unconscionable plan or scheme was used to improperly influence the court's decision." *Stonger*, 776 N.E.2d at 357. Second, Wife presented evidence showing that her counsel made several attempts to get Husband's cooperation in the preparation of the second MPDO without success. Wife's counsel advised Husband's counsel that a failure to respond to the final two emails asking for assistance would be deemed acquiescence by Husband. Finally, the DFAS gave Husband thirty days to object to the second MPDO, and he did not do so. As the trial court found, the evidence does not show fraud on the court.

[15] Still, Husband contends that the second MPDO is void because his signature on that document was a "forgery." Appellant's Br. at 21. In support, Husband cites case law holding that "material alteration of a written instrument, by one who claims the benefit of it, made without the consent of the party against whom it

is to be enforced, renders it void." *Id.* at 22 (quoting *Bowman v. Mitchell*, 79 Ind. 84, 85 (1881)). But Husband did not present evidence to the trial court that Wife's use of his signature from the first MPDO was done without his or his counsel's consent. Thus, Husband has not shown that his signature on the second MPDO was forged.

[16] Finally, as the trial court found, Husband has not shown that the second MPDO violates the dissolution decree or otherwise prejudices him. In fact, Wife is getting *less* from DFAS than she is owed under the dissolution decree.

> For non-constitutional errors, like the one here, our harmless-error analysis is found in Appellate Rule 66(A):
>
> > No error or defect in any ruling or order or in anything done or omitted by the trial court or by any of the parties is ground for granting relief or reversal on appeal where its probable impact, in light of all the evidence in the case, is sufficiently minor so as not to affect the substantial rights of the parties.
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> App. R. 66(A).

Hayko v. State, 211 N.E.3d 483, 491 (Ind. 2023), *cert. denied*, 144 S. Ct. 570 (2024).

[17] In sum, the trial court did not err when it found that Wife did not commit fraud on the court. And Husband has not shown that the second MPDO was void.

[18] Affirmed.

Tavitas, J., and Weissmann, J., concur.

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